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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,916	01/18/2001	Frederic Canut	260/087	8270
23639	7590	07/15/2004	EXAMINER	
BINGHAM, MCCUTCHEN LLP THREE EMBARCADERO, SUITE 1800 SAN FRANCISCO, CA 94111-4067			KANG, INSUN	
			ART UNIT	PAPER NUMBER
			2124	

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/765,916

Applicant(s)

CANUT ET AL.

Examiner

Insun Kang

Art Unit

2124

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is responding to amendment filed 4/16/2004.
2. As per applicant's request, claims 1, 13-14 and 26 have been amended. Claims 1-26 are pending in the application.

### ***Specification***

3. The objection to the abstract has been withdrawn due to the amendment to the Specification.

### ***Claim Objections***

4. The objection to claims 1-3, 13 and 26 has been withdrawn due to the amendment to the claims.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. The term "substantially" in claims 1 and 14 is a relative term, which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one having ordinary skill in the art would not be reasonably apprised of the scope of the invention. Appropriate correction is required.

The applicant stated that the use of the term "substantially" is proper, "because one of ordinary skill in the art would understand what is claimed, in light of the specification." However, it is noted, "the test for definiteness under 35 U.S.C. 112,

second paragraph is whether "those skilled in the art would understand what is claimed when the claim is read in light of the specification." *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986). The specification states, for example, "although the coding is specific to the DSP target for the application, the code preferably remains in the high level language," page 7 lines 10-15. There is no clear guidance as to the meaning of the term "substantially" from the specification ascertaining the requisite scope of what is the independent, dependent or coded portion (and what is not) and how they are determined to be substantially independent, dependent and coded. Therefore, the term "substantially" renders the claims indefinite. Accordingly, the rejection of the 35 U.S.C. 112 second paragraph is proper and maintained.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3, 8-16 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pieper et al (US 2003/0005419) in view of Steinmetz et al. (US Patent 5,812,854) hereinafter referred to as "Steinmetz."

Regarding claim 1, Pieper et al. disclose a method of optimizing a software program for a target processor to meet performance objectives, where the software program is coded in a high-level Language (par. 0019; par. 0020), the method comprising the steps of: (a) optimizing the software program such that a resulting first optimized form of the software program is substantially independent of the target processor and is substantially coded in the high-level language (par. 0020; 0030); (b) optimizing the first optimized form of the software program such that a resulting second optimized form of the software program includes at least one portion that is substantially dependent on the target processor and is substantially coded in the high-level language (par. 0031, 0020);

Pieper et al. do not explicitly disclose flagging the substantially dependent high-level language portion of the second optimized form as claimed.

However, Steinmetz teaches that flagging code in a source file was known in the art of software development and optimization, at the time applicant's invention was made, to mark or identify some portions or whole code as an event of some type or having a special purpose or capability ("the user-defined machine code input...could contain a pseudo-op directing the compiler to leave a group of instructions in a predetermined order...the pseudo-op flags group of instructions so the compiler will not reorder them even if the compiler believes such a reordering would be more efficient," col. 10 lines 1-25). It would have been obvious for one having ordinary skill in the art of computer software development and optimization to modify Pieper et al.'s disclosed system to flag the modified target dependent code. The modification would be obvious because

one having ordinary skill in the art would be motivated to identify the target specific code for efficient optimization and portability ("any pseudo-ops present in the user-defined machine-dependent code input would also be converted to a form compatible with machine-dependent intermediate code...to serve as compiler directive mechanisms during machine-dependent optimizations," col. 9 lines 25-41; "The next step...is to translate the integrated and optimized code into machine code form that can be read by the target computer system. Thus, the resulting machine code is well integrated and optimized. This results in code with fast and efficient performance," col. 10 lines 26-31) as taught by Steinmetz.

(c) optimizing the second optimized form of the software program such that a resulting third optimized form of the software program is substantially dependent on the target processor and is includes portions coded in a low-level language of the target processor (par. 0031).

Regarding claim 2, Pieper et al. disclose the method of claim 1, further comprising steps of: (a) determining a first performance profile for the first optimized form of the software program, and comparing the first performance profile with the performance objectives (par. 0031; par. 0045); and (b) determining a second performance profile for the second optimized form of the software program, and comparing the second performance profile with the performance objectives (par. 0032; 0044).

Regarding claim 3, Pieper et al. further disclose the method of claim 2, wherein steps (b), (bl ), and (c) are not performed if the performance objectives are met after completing step (a), and step (c) is not performed if the performance objectives are met after completing step (b) (" the executable code is executed by process to generate execution profile data that is used by the processes to determine whether the code, when executed, exhibits optimal execution performance, and if code does not exhibit optimal execution performance, may be used by the processes make more is optimal versions of the code from which more optimal versions of code may be generated," par. 0032).

Regarding claim 9, Pieper et al. further disclose the act of implementing reference code comprises code profiling (par. 0031, 0042 ; 0046 ; 0048 ; 0049 ; 0052).

Regarding claim 8, this claim is another version of the claimed method discussed in claim 9, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth the above. Therefore, accordingly, Pieper et al. disclose this claim.

Regarding claim 10, Pieper et al. further disclose the method of claim 1 in which step (b) comprises the act of optimization predicted to improve resulting assembly code ("In generating the code, generator modifies the code such that code reflects scheduling and other low-level optimizations of the code, which are dependent on the target processor architecture," 0031; 0032; 0009).

Regarding claim 11, Pieper et al. further disclose the method of claim 1 in which step (b) comprises the act of tuning low-level functions (0031).



Regarding claim 12, Pieper et al. further disclose the method of claim 1 in which step (c) comprises the act of manual assembly optimization. Hand-coded assembly for optimized performance is necessary for performance critical routines such as graphics or math library routines as they often must access low-level machine instructions for optimal execution performance. Therefore, accordingly, Pieper et al. anticipate this claim. See also 0009 and 0018.

Regarding claim 13, Pieper et al. disclose the methods claim 1 in which step (b) comprises the act of feature tuning (0031; 0032).

Per claims 14-16 and 21-26, they are the computer-readable medium versions of claims 1-3 and 8-13, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-3 and 8-13 above.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4-7 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pieper et al (US 2003/0005419) in view of Steinmetz et al. (US Patent 5,812,854) and further in view of Kum et al (0-7803-5041-3/99, IEEE).

Regarding claim 4, Pieper et al. and Steinmetz et al. do not explicitly teach a floating-point implementation. However, Kum et al. disclose deriving a floating point

implementation (pg 2163, introduction, par. 3, "...the ranges of floating point variables are estimated by the simulation of the range estimation program that is automatically generated from the original floating-point version," see also Figure 1) for the purpose of automatic scaling of all numbers so that the numbers use the full word length available and for the purpose of reducing the risk of overflow.

Therefore, it would have been obvious to a person of ordinary skill in the art to incorporate the teachings of Kum et al. to the system of Pieper et al and Steinmetz et al. The modification would be obvious to include the floating-point implementation because of the automatic scaling of each number to use the full word length of the mantissa so that accurate representation of numbers can be obtained while minimizing the risk of overflow and quantization errors (pg 2163, introduction, par. 3).

Regarding claim 5, Pieper et al. and Steinmetz et al. do not explicitly teach a fixed point implementation. However, Kum et al. disclose the method of claim 1 in which step (a) comprises the act of deriving a fixed point implementation so that "assembly coding and manual scaling can be avoided and the translated C programs are executed very efficiently" in fixed-point DSPs (pg 2163, Introduction, lines 1-15).

Therefore, it would have been obvious to a person of ordinary skill in the art to incorporate the teachings of Kum et al. to the system of Pieper et al and Steinmetz et al. The modification would be obvious to include the fixed-point implementation so that round-off errors can be prevented and target dependent scaling shift can be minimized

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while obtaining fast real-time processing with less power and memory usage (pg 2163, Introduction, lines 1-15).

Regarding claim 6, Pieper et al. and Steinmetz et al. do not explicitly teach the act of processing qualification. However, Kum et al. further disclose the act of processing qualification (Introduction, par.3; simulation-based integer word-length determination, pg 2165, shift reduction, par. 10; pg 2163, par. 6; pg 2166, Concluding remarks) so that cost effective and high quality fast real-time processing with less power and memory usage can be obtained while reducing quantization noise (Introduction, par.3; simulation-based integer word-length determination, pg 2165, shift reduction, par. 10; pg 2163, par. 6; pg 2166, Concluding remarks).

Therefore, it would have been obvious to a person of ordinary skill in the art to incorporate the teachings of Kum et al. to the system of Pieper et al and Steinmetz et al. . The modification would be obvious to include the act of processing qualification for the purpose of high quality processing with minimized quantization noise.

Regarding claim 7, Pieper et al. and Steinmetz et al. do not explicitly teach the act of implementation sizing. However, Kum et al. further disclose the act of implementation sizing (abstract; Introduction, pg 2163, par.3; pg 2163, simulation-based integer word-length determination) by program-profiling results (pg 2164-2165, Sift reduction) so that estimation of code size for the target can be obtained and the risk of overflow can be prevented.

Therefore, it would have been obvious to a person having ordinary skill in the art to incorporate the teachings of Kum et al. to the system of Pieper et al and Steinmetz et

al. The modification would be obvious to include the act of implementation sizing for the purpose of code size estimation so that the risk of overflow can be prevented (pg 2164-2165, Sift reduction).

Per claims 17-20, they are the computer-readable medium versions of claims 4-7, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 4-7 above.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Insun Kang whose telephone number is 703-305-6465. The examiner can normally be reached on M-F 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on 703-305-9662. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IK  
6/28/2004



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